UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,675	12/30/2003	Scott K. Brown	06975-379001 / AOL 139	2909

26171 7590 03/01/2007	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022	LEE, CHUN KUAN	
	ART UNIT	PAPER NUMBER
	2181	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)
Office Action Summary	10/747,675	BROWN ET AL.
	Examiner	Art Unit	
	Chun-Kuan (Mike) Lee	2181	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>30 November 2006</u>.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-33</u> is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-33</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>30 December 2003</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All   b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

RESPONSE TO ARGUMENTS

1.   Applicant's arguments filed 11/30/2006 have been fully considered but they are

not persuasive. Rejection of claims 19-31 under 35 U.S.C. 112 second paragraph is

withdrawn. Rejection of claims 19-31 under 35 U.S.C. 101 is withdrawn. Currently,

claims 1-33 are pending for examination.

2.   In responding to applicant's arguments regarding to independent claim 1 rejected

under 35 U.S.C. 102(b) that Monteiro does not teach the claimed limitation "from a

source, accessing a rule set, the rule set being configured to response to an arising

condition based on whether the arising condition is met after the first track of electronic

media has been accessed," as stated on page 9, last paragraph to page 10, 1st

paragraph. Applicant's arguments have fully been considered, but are not found to be

persuasive.

Monteiro teaches a system and a method comprising:

accessing a first track of electronic media from a source (Fig. 1, ref. 10, 20, 30,

50, 60), wherein the first track of electronic media is accessed by the user, as the

source, including the media server (Fig. 1, ref. 30), transfers the audio packets of the

first track to the user (Fig. 8B);

from the source (e.g. media server), accessing a rule set, the rule set being

configured to response to an arising condition based on whether the arising condition is

met after the first track of electronic media has been accessed (col. 7, ll. 21-30),

wherein the media server access the rule set in responses to occurrence of the arising

conditions associated with the packet loss and network congestion, and lowers the data

transferring rate of the audio packet to the user.

3.   As applicant applied similar arguments presented for independent claim 1

towards independent claims 19 and 31, as independent claims 19 and 31 recited similar

claimed limitations as independent claim 1. The examiner also applies similar

responses as presented above for independent claim 1 towards independent claims 19

and 31.

4.   As per claims 2-18, 20-30 and 32-33, dependent claims 2-18, 20-30 and 32-33

are unpatentable at least due to direct or indirect dependency on the rejected

independent claims 1 and 19.

5.   In respond to all applicant's arguments, the examiner maintains his position and

the current rejection of record in detail below.

I. INFORMATION CONCERNING OATH/DECLARATION

Oath/Declaration

6.   The applicant's oath/declaration has been reviewed by the examiner and is found

to conform to the requirements prescribed in **37 C.F.R. 1.63.**

II. INFORMATION CONCERNING DRAWINGS

Drawings

7.   The applicant's drawings submitted are acceptable for examination purposes.

III. REJECTIONS BASED ON PRIOR ART

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8.   Claims 1, 5-9, 11, 14-21, 23 and 26-33 are rejected under 35 U.S.C. 102(b) as

being anticipated by Monteiro et al. (US Patent 6,119,163).

9.   As per claims 1, 19 and 31, Monteiro teaches a method and a system of enabling

access to electronic media comprising:

means for accessing a first track of electronic media from a source (Fig. 1, ref.

10, 20, 30, 50, 60) (Fig. 8B), wherein after proper connection setup, the user accesses

the first track from the source's media server (Fig. 1, ref. 30) as audio packets are

transferred to the user to be played;

means for accessing a rule set from the source, the rule set being configured to

respond to an arising condition (conditions comprising deterioration of the situation

associated with packet loss and network congestion) based on whether the arising

condition is met after the first track of electronic media been accessed (col. 7, ll. 21-30),

the rule set including:

an event definition describing an event condition to be monitored during a current

media state (col. 7, ll. 21-30), wherein the system monitors event condition comprising

the deterioration of the situation associated with packet loss and network congestion

while audio packets is been transferred to the user;

an event transition that relates the event definition to a new media state to enable

the new media to be realized upon detecting the event condition described with respect

to the event definition (col. 7, ll. 21-30), wherein the new media state is the transferring

of the audio packet at the lower bitrate, to be implemented upon detecting the

deterioration of the situation associated with packet loss and network congestion such

as the increase in packet loss or the network becoming congested;

means for detecting that the event condition described with respect to the event

definition in the rule set has occurred (col. 7, ll. 21-30), wherein the detection is

implemented as the system monitors the event condition and adapt to the occurrence of

the event condition accordingly; and

means for performing the event transition in response to detecting occurrence of

the event condition (col. 7, ll. 21-30), wherein the event transition is implemented as the

system adapt to the occurrence of the event condition, such as lowering the audio's

bitrate to be transferred to the user.

10.   As per claim 5, Monteiro teaches the method and the system of enabling access

to electronic media comprising wherein performing the event transition includes

accessing a second track, the second track relating to the new media state described in

the event transition (col. 7, ll. 21-30), wherein the second track relate to the new media

state of the transferring of the first track at the lower bitrate, resulting from the event

condition associated with the deterioration of the situation associated with packet loss

and network congestion.

11.   As per claim 6, <u>Monteiro</u> teaches the method and the system of enabling access

to electronic media comprising wherein accessing the second track includes accessing

an instantiation of the first track encoded at a different bit rate (col. 7, ll. 21-30), wherein

the second track is the transferring of the first track at the lower bitrate.

12.   As per claim 7, <u>Monteiro</u> teaches the method and the system of enabling access

to electronic media comprising wherein accessing the first track includes referencing a

location for the electronic media (program guide (upper right corner) of Fig. 18), wherein

accessing the first track comprising playing "Smashing Pumpkins Live!" include

referencing a location for the electronic media comprising "From La Cigale in Paris".

13.   As per claims 8 and 20. <u>Monteiro</u> teaches the method and the system of enabling

access to electronic media comprising wherein accessing the rule set with the event

definition includes accessing a code segment describing a media player event (event

comprising the insertion of the advertising stream) for a media player (Fig. 18)

accessing the electronic media (electronic media comprising the first track of audio) that

was not configured to process prior to accessing the rule set (col. 8, ll. 16-30), wherein

the media player playing the audio is not configured to insert the advertising stream

without the delivery of the advertising stream in advance of the regular programming.

14.   As per claims 9 and 21, <u>Monteiro</u> teaches the method and the system of enabling

access to electronic media comprising wherein accessing the rule set with the event

definition and performing the event transition include accessing the event definition that

relates to an interrupt in a network service while accessing the first track, and

responding to the network interrupt in response (col. 8, ll. 16-30), wherein the interrupt

in the network service in streaming of the regular programming resulting from the

reception of the cueing signal and in response, the advertising stream is inserted into

the stream of regular programming.

15.   As per claims 11 and 23, <u>Monteiro</u> teaches the method and the system of

enabling access to electronic media comprising wherein accessing the rule set with the

event definition and performing the event transition include accessing an event

condition within the event definition that describes a playlist that is used to select

content, and using the playlist to select content (Fig. 18 and col. 17, ll. 24-27), wherein

the playlist is the list of channels displayed in the upper left frame, in the channel guide,

utilized for selecting the content.

16.   As per claims 14 and 26, <u>Monteiro</u> teaches the method and the system of

enabling access to electronic media further comprising accessing an event condition

within the rule set that relates to a commonly used across a type of media, using the event definition when the type of media is being used, and performing the event transition when the event associated with the type of media occurs for the media being used (col. 7, ll. 21-30), wherein the rule set, associated with the lowering of data bitrate, is commonly utilized across the audio type media.

17. As per claims 15 and 27, <u>Monteiro</u> teaches the method and the system of enabling access to electronic media comprising wherein accessing an event condition related to the type of media, using the event definition, and performing the event transition include using a rule set that relates to video, audio, or data visualization (col. 4, ll. 15-21).

18. As per claims 16 and 28, <u>Monteiro</u> teaches the method and the system of enabling access to electronic media further comprising accessing an event condition that is commonly used across a particular class of content or a theme (audio data of various classification comprising classic rock, college rock, cool jazz, etc), using the event definition when the particular class of content or the theme is being used, and performing the event transition when the event associated with the type of particular class of content or the theme occurs (upper left corner of Fig. 18 and col. 7, ll. 21-30), wherein the event condition associated with the deterioration of the situation associated with packet loss and network congestion is commonly apply across the particular classification of audio data.

19.   As per claims 17 and 29, <u>Monteiro</u> teaches the method and the system of

enabling access to electronic media comprising wherein detecting that the event in the

rule set has occurred includes determining that access to the first track has been

interrupted (col. 15, ll. 10-16), wherein the interrupting is determined by utilizing Ping

Objects, as the Ping Objects are sent to and return from the user periodically to verify

that the computer is working and active and if Ping Object is not returned, interrupt is

determined.

20.   As per claims 18 and 30, <u>Monteiro</u> teaches the method and the system of

enabling access to electronic media further comprising wherein detecting that the event

in the rule set has occurred includes receiving state information (Version Object) from a

communications interface (Fig. 8B; col. 11, ll. 28-32 and col. 12, ll. 1-15), wherein prior

to the user accessing the audio the state information comprising the version of protocol

is received through the communication interface.

21.   As per claims 32, <u>Monteiro</u> teaches the method and the system of enabling

access to electronic media comprising wherein the source include a first server

structure (Fig. 1, ref. 10, 20, 30, 50, 60) and arrange to:

        enable access to the first track (Fig. 1, ref. 30), wherein the audio (first track) can

be accessed through media server (Fig. 8B); and

enable access to the rule set (Fig. 2, ref. 150 and col. 4, ll. 38-49), wherein the

rule set associated with the insertion of the advertising stream is accessed (col. 8, ll. 1-

30).

22.   As per claims 33, <u>Monteiro</u> teaches the method and the system of enabling

access to electronic media comprising:

wherein the source include a first server (media server 30 of Fig. 1) structured

and arranged to enable access to the first track (Fig. 8B), wherein the audio (first track)

can be accessed through media server,

and a second server (supervisory workstation 150 of Fig. 2) structured and

arranged to enable access to the rule set (col. 4, ll. 38-49), wherein the rule set

associated with the insertion of advertising stream (stream of commercial advertising)

(col. 8, ll. 1-30) is control and manage by the supervisory workstation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

23.   Claims 2-3, 10, 13, 22 and 25 are rejected under 35 U.S.C. 103(a) as being

unpatentable over <u>Monteiro et al.</u> (US Patent 6,119,163) in view of Marks et al. (US

Pub. 2001/0053944).

Monteiro teaches all the limitations of claims 1, 8 and 20 as discussed above.

Monteiro further teaches the method and the system of enabling access to electronic

media comprising information associated with availability of channels are dynamically

updated, such that if a new channel begins operation, the user software can

immediately display it as being available (col. 17, II. 36-41).

Monteiro does expressly teach the method and the system of enabling access to

electronic media comprising:

wherein accessing the rule set includes downloading a rule set from a host;

wherein a media player is invoked before downloading the rule set; and

wherein accessing the rule set with the event definition and performing the event

transition include accessing the event definition that relates to an availability of a

prioritized media selection that is now available and notifying the user as to the

availability of the prioritized media selection and

wherein accessing the rule set with the event definition and performing the event

transition include accessing an event condition within the event definition that enables

an emergency broadcast system to interrupt the first track, and switching to a

transmission of the emergency broadcast system.

Marks teaches a audio internet navigation system comprising:

selecting the link on the player (Fig. 1) which causes the band to switch, wherein

the new band will provide the rule set comprising the event condition associated with

when there is an announcement of promotion and the event transition comprising

asserting the announcement of promotion if the listener is not a subscriber and not

asserting the announcement of promotion if the listener is a subscriber, therefore the

associated rule set is listener specific, and the provider (host) must decipher if the newly

linked listener is a subscriber or not and in order to properly provide (provide through

downloading) the listener the correct rule set ([0039]); and

a priority function, wherein the user prioritizing certain selected electronic media,

as the user may select and set the electronic media with the priority of urgent and when

the urgent electronic media become available, the user is notified of the availability of

the urgent electronic media immediately, as the playing of the current electronic media

is interrupt and the urgent electronic media commence to be played ([0096]).

It would have been obvious to one of ordinary skill in this art, at the time of

invention was made to include Marks' downloading of the listener specific rule set and

priority function into Monteiro's accessing of the electronic media. The resulting

combination of the references teaches the user is running the media player and

listening to an audio channel, and when the user switches to a new audio channel the

rule set associated with the announcement of promotions will be downloaded as the

provider provides the correct rule set to the user, depending on if the user is a

subscriber or not; and

the user further is able to select and prioritized certain electronic media, such as

setting the electronic media with the urgent (emergency) priority and when the urgent

electronic media becomes available, the user is notified that the urgent electronic media

is available, as the urgent electronic media interrupts the playing of the current media

and the urgent electronic media commence to be played.

Therefore, it would have been obvious to combine Marks with Monteiro for the

benefit of expanding the settings preferences available to the user's player as the user

can select the allowance of the announcement of promotions or not and prioritize what

will be played utilizing six priority levels (Marks, [0039], [0096]).

24.   Claims 4, 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Monteiro et al. (US Patent 6,119,163) in view Rowlands (US Pub. 2002/0083346).

Monteiro teaches all the limitations of claims 1, 8 and 20 as discussed above.

Monteiro does expressly teach the method and the system of enabling access to

electronic media comprising:

wherein accessing the first track requires accessing the rule set before the

content is rendered; and

wherein accessing the rule set with the event definition and performing the event

transition include accessing an event condition within the event definition that describes

a licensing restriction and selecting content that complies with the licensing restriction.

Rowlands teaches a system and a method comprising:

a ticket T utilized for proving authorization have been obtained by a user to play a

musical data ([0030]); and

the user providing the ticket T to a sender for verification of the ticket T and when

the sender verifies that the ticket T is valid, the sender transmits the requested musical

data to the user ([0035]-[0037]).

It would have been obvious to one of ordinary skill in this art, at the time of invention was made to include <u>Rowlands</u>' ticket T into <u>Monteiro</u>'s accessing of the electronic media. The resulting combination of the references teaches the rule set further comprising wherein the event definition describes the verification of the ticket T and enabling the user to select the electronic media that complied with the verified ticket T, and furthermore, the verification of the ticket T must be implemented before the electronic media associated with the ticket T can be played.

Therefore, it would have been obvious to combine <u>Rowlands</u> with <u>Monteiro</u> for the benefit of protecting the right and interest of copyright holders associated with the musical data as the musical data is transferred from the source to the user ([0003]-[0004]).

IV. CLOSING COMMENTS

Conclusion

a. STATUS OF CLAIMS IN THE APPLICATION

The following is a summary of the treatment and status of all claims in the

application as recommended by **M.P.E.P. 707.07(i)**:

a(1) CLAIMS REJECTED IN THE APPLICATION

Per the instant office action, claims 1-33 have received a **FINAL ACTION** on the

merits. Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

b. DIRECTION OF FUTURE CORRESPONDENCES

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Chun-Kuan (Mike) Lee whose telephone number is

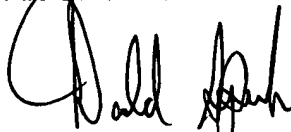(571) 272-0671. The examiner can normally be reached on 8AM to 5PM.

IMPORTANT NOTE

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Donald Sparks can be reached on (571) 272-4201. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 06, 2007   Chun-Kuan (Mike) Lee
                                                     Examiner
                                                     Art Unit 2181

                                                     DONALD SPARKS
                                                     SUPERVISORY PATENT EXAMINER